

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

OP.No. 27335 of 2002(S)

OA.1298/1999 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:

1. COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN, NEW DELHI.
2. THE ASSISTANT COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN, NEW DELHI.
3. THE ASSISTANT COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN, JABALPUR.
4. THE PRINCIPAL,
KENDRIYA VIDYALAYA, NOWROZABAD,
MADHYA PRADESH.

BY ADV. M/S.IYER & IYER, SC.KENDRIYA VIDYALAYA

RESPONDENTS:

1. K.M.LEELA, W/O. MURALEEDHARAN G.,
RESIDING AT GOPAL SADAN, HOSPITAL ROAD,
MATTANNUR, KANNUR DISTRICT.
2. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF EDUCATION, NEW DELHI.

R2 BY ADV. SRI.ROJO JOSEPH THURUTHIPARA, ADDL.CGSC

R1 BY ADV. SRI.CIBI THOMAS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 12/07/2007, THE COURT ON 06/08/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O. P. No 27335 of 2002

Dated: 6th August 2007

JUDGMENT

Radhakrishnan, J.

This writ petition was preferred by the Commissioner, Kendriya Vidyalaya Sangathan and others aggrieved by the order of the Central Administrative Tribunal in O.A. No 1298 of 1999 interfering with the order of termination of service of the first respondent herein and the directing the petitioners to give her an order of posting as P.G.T (Maths) under them forthwith. Original Petition was preferred on 23.09.2002 and there was stay of operation of the impugned order. No steps have been taken by the first respondent either to vacate the stay or for an early hearing of the case. When the matter came up for hearing before us in the routine course we heard counsel on either side.

2. Kendriya Vidyalaya Sangathan is an autonomous body under the Ministry of H.R.D, Department of Education, Government of India, which has established various educational institutions all over the country. First respondent was initially appointed against a temporary post of P.G.T

(Maths) in the Kendriya Vidyalaya Sangethan on 17.01.1994 and was posted in Bhubaneswar in Madhya Pradesh. After serving there for three years she applied for two months leave from 10.07.1997 and continued to remain absent from duty unauthorisedly by sending leave applications from time to time. First respondent was later posted at Kendriya Vidyalaya at Noworazabad which is also a project of Kendriya Vidyalaya. Due to unauthorised absence of the first respondent studies of the children especially that of Standards X and XII were badly affected. Assistant Commissioner, Kendriya Vidyalaya Sangethan, Jabalpur, the appointing authority, posted another at Noworazabad. On 22.09.1998 first respondent reported before the Assistant Commissioner, Kendriya Vidyalaya Sangethan, Jabalpur and requested to notify the place of her posting as she expressed her willingness to join duty. On the basis of the request Assistant Commissioner asked her to report for duty at K.V. Jayant Colliery latest by 15.10.1998. First respondent however did not report for duty, instead she continued to send applications requesting for leave. Assistant Commissioner later by memo dated 27.01.1999 informed her that the leave applied for was not granted and therefore she should report for duty on or before 15.02.1999. Principal of the Kendriya Vidyalaya, Jayant Colliery by letter dated 07.11.1999 requested the first respondent to join duty stating

that absence of a teacher would cause prejudice to the students due to appear for Board examination. In spite of the request still first respondent remained absent unauthorisedly.

3. Assistant Commissioner, Kendriya Vidyalaya Sangethan however issued memo dated 23.02.1999 directing the first respondent to report for duty by 22.03.1999 failing which it was informed it would be presumed that she was not interested to continue in service of the Kendriya Vidyalaya. First respondent was also intimated that the memo should be treated as notice towards termination of service as provided for in the offer of appointment. First respondent did not care to report for duty even after the receipt of the memo. Finally Assistant Commissioner, Kendriya Vidyalaya, Jabalpur informed the first respondent that her service is no longer required by the Kendriya Vidyalaya Sangethan with effect from 22.05.1999.

4. The first respondent then challenged the order before the Tribunal. She contended that her unauthorised absence was because of her illness. She had undergone abortion and was suffering from back pain and therefore could not report for duty. Further it was pointed out that her service was wrongly terminated without notice and without conducting enquiry. Since first respondent was a regular employee Tribunal found favour with the

contention raised by her and allowed the application. Tribunal noticed that no enquiry was conducted before terminating the service of the first respondent. Tribunal also held that the first respondent had to be treated as a confirmed employee though there was no actual order of completion of probation. Tribunal placed reliance on the decisions of the apex court in State of Punjab v. Dharam Singh (1968) 3 SCR 1) and M.K. Agarwal v. Gurgaon Gramin Bank (1987 Suppl. S.C.C 643) and several other decisions. Counsel appearing for the petitioners submitted that the Tribunal was not justified in interfering with the order of termination of service on the ground that first respondent was a regular employee. Further counsel submitted that on facts also no grounds have been made out to interfere with the order of termination of service. Further counsel submitted that the first respondent was only a probationer and without conducting enquiry her service could be terminated. First respondent has not produced any document to show that even though she had completed three years of service she had completed the period of probation. Counsel submitted that Dharam Singh's case has been overruled by the apex court in High Court of Madhya Pradesh v. Satya Narayan Jhavar (2001 (7) SCC 161).

5. We may first examine whether there was any deemed confirmation as held by the Tribunal placing reliance on the decision of the apex court in

Dharam Singh's case. It is necessary to extract the rules relating to probation and confirmation. Rules 10 and 11 are extracted below for easy reference.

10. Probation

(1) Every direct recruit shall initially be appointed on probation, the period of probation being two years from the date of appointment, which may be extended to three years by the competent authority for reasons to be recorded in writing.

(2) Every person other than a probationer shall when first appointed to any post, be on probation for a period of two years from the date of such appointment, which may be extended to three years by the competent authority for reasons to be recorded in writing.

11. Confirmation of probationers.

When an employee appointed to a post on probation or on trial has completed his/her probation trial to the satisfaction of the appointing authority, he/she be eligible for substantive appointment or continuance therein, as the case maybe, and such substantive appointment shall be made in the order of seniority as indicated in the relevant select panel.

Rule 10 would indicate that every direct recruit shall initially be appointed on probation, the period of probation being two years from the date of appointment, which may be extended to three years by the competent authority for reasons to be recorded in writing. First of all there is no extension of the period of probation by the competent authority stating any reason. Rule 11 would indicate that when an employee appointed to a post on probation or on trial has completed his/her probation or on trial to the

satisfaction of the appointing authority, he/she shall be eligible for substantive appointment or continuance therein, as the case may be, and such substantive appointment shall be made in the order of seniority as indicated in the relevant select panel. Rule 11 would indicate that for a positive action by the appointing authority he must be satisfied that employee is eligible for substantive appointment. Such substantive appointment shall be made in the order of seniority as indicated in the relevant select panel. Positive action from the appointing authority can be taken only when the employee satisfies the requirement of the rule. If that be so, going by the decision of the apex court in Satya Narayan Jhavar's case, supra (2001 (7) SCC 161), in the absence of any specific act on the part of the appointing authority, first respondent could be considered only as a probationer.

6. The apex court in the above case held that though under the rules a maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purpose of confirmation in such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because

the said period expired. Resultantly under Rule 11 there must be a specific act by the appointing authority holding that the employee is eligible for substantive appointment. Appointing authority shall be satisfied that the employee shall be eligible for substantive appointment and that substantive appointment shall be made in the order of seniority as indicated in the relevant select panel. Since the appointing authority has not taken any such positive action as indicated in Rule 11 first respondent should be treated only on probation and hence no enquiry need be conducted for termination of service of the first respondent. Termination herein was simpliciter and no enquiry was warranted. On facts also we are convinced that first respondent has not obeyed the various directions given by the authorities. Being a teacher she should be present and attend to the duties in the interest of the institution. The same was not done by the first respondent and therefore she deserves no sympathy. In such circumstances, we allow this original petition and set aside the order of the Tribunal.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

06/08/2007

en

APPENDIX

Petitioners' exhibits:

- Ext.P1 - True copy of instructions laid down by the Kendriya Vidyalaya
- Ext.P2 - True copy of application of the first respondent
- Ext.P3 - True copy of office memorandum of Kendriya Vidyalaya
- Ext.P4 - True copy of memo issued to first respondent by Kendriya Vidyalaya
- Ext.P5 - True copy of letter of the principal to first respondent
- Ext.P6 - True copy of memo issued by the second petitioner to first respondent
- Ext.P7 - True copy of memo issued by the second petitioner to the first respondent
- Ext.P8 - True copy of proforma offer of the appointment issued by the Kendriya Vidyalaya Sangathan
- Ext.P9 - True copy of order of Tribunal in OA 1298/99

Respondent's exhibits:

- Ext. R1(a) True copy of representation dated 12.12.02 sent by the respondent to first petitioner
- Ext R1(b) True copy of postal receipt
- Ext.R1(c) True copy of representation dt 10.7.04
- Ext.R1(d) True copy of postal receipt of Ext R1(c)
- Ext.R1(e) True copy of lawyer notice dt 17.5.05
- Ext.R1(f) True copy of acknowledgment card showing the receipt of Ext R1 (e)
- Ext.R1(g) - True copy of information F No 15-20/17 2007 KVS (L&C)
- Ext.R1(h) True copy of representation dt 26.4.07
- Ext.R1(i) True copy of posting order dt 19.4.94
- Ext.R1(j) True copy of representation dt 2.3.99 to Commissioner,KVS
- Ext.R1(k) True copy of do. Sent to Asst. Commissioner,Jabalpur dt 2.3.99
- Ext.R1(l) True copy of appeal memorandum submitted by the respondent dt 19.5.99
- Ext.R1(m) True copy of certificate issued by Principal to the respondent dt 4.11.97

[true copy]